

TOWN OF HOLDERNESS
Zoning Board of Adjustment

Regular Meeting Minutes September 12, 2017

Members Present: Wendell Broom, Vice Chairman
Gary Karp, Member Jude Ruhm, Member Kristen Fuller, Member

Members Not Present: Robert Maloney, Chairman Gary Johonnett, Alternate

Staff Present: Nancy Decoteau, Admin Assistant

Others Present: Jack McCormick John March Jerrod Mitchell
Matt Barnard Bruce Barnard Peter K. King Jason Sharpe
Molly Whitcomb Miriam Schacter Janet Cocchiaro Richard Cocchiaro
Frank Stevens

CALL TO ORDER:

The meeting was called to order at 6:15 P.M. A quorum was present.

APPROVAL OF MINUTES:

MOTION: "To approve the minutes of April 11, 2017 as amended."

Motion: G. Karp

Second: J. Ruhm

Discussion: The name "W. Johnson" was corrected to "W. Mitchell" on page 1.

The word "affluent" was changed to "effluent" on page 2.

Motion Passed: 4 – Yes 0 – No

MOTION: "To approve the minutes of May 9, 2017 as presented."

Motion: G. Karp

Second: K. Fuller

Discussion: None

Motion Passed: 4 – Yes 0 – No

W. Broom stated the following case would be considered:

Case #420-09-17: Application submitted by property owners, Miriam Schacter & Benjamin Gampel, for Variances to allow the placement of a shed on property located at 58 White Oak Pond Road identified as Tax Map 246-004-000, in the General Residential District, Town of Holderness.

The variances requested include the following:

1. A variance from Section 400.8.1.1 in the amount of 25 ft. to locate the shed 10 ft. from the side boundary line.
2. A variance from Section 400.8.1.2 in the amount of 25 ft. to locate the shed 25 ft. from the reference line of White Oak Pond.

W. Broom confirmed that the Board members received the application information for Case#420-09-17.

The Board determined that the fees have been paid, public notice was posted, abutters were notified and sufficient documents to open the hearing were submitted.

The Board determined the application does not have regional impact.

No Board member indicated they had a conflict of interest with Case # 420-09-17.

W. Broom stated that only four members were able to attend the Public Hearing and asked the applicant if they wanted to proceed or continue the Public Hearing to next month.

The applicant determined to proceed with the Public Hearing.

W. Broom opened the Public Hearing for Case# 420-09-17 at 6:20pm.

The Applicant, M. Schacter, presented the application.

M. Schacter stated the variance is requested so that a shed can be located on their property 10 ft. from the side property line and 25 ft. from the waterfront.

M. Schacter stated the shed would be used to house the outdoor furniture and kayaks.

M. Schacter stated the proposed location of the shed is on the only flat area on the property and the proposed location makes it convenient for them not to drag the items up the hill.

M. Schacter stated if the shed was located in compliance with the side setbacks the view to the water would be blocked.

M. Schacter stated a letter of support was submitted by the neighbors on the side where the shed is to be located.

W. Broom asked if there are other things involved.

M. Schacter responded "no".

G. Karp asked if there is an existing shed on the property.

M. Schacter responded "no".

W. Broom asked if Board members had additional questions.

W. Broom asked for Public Comments in Favor of the Application: None heard.

M. Schacter reminded the Board an abutter sent in a letter of support.

W. Broom asked for Public Comments in Opposition to the Application: None heard.

W. Broom noted that it was not necessary to ask for comments in rebuttal.

W. Broom asked if there were further questions from Board Members.

G. Karp asked if there were other options or a possibility of locating the shed on a sloping area within the setbacks that may require some ground work to get the shed level.

M. Schacter stated there are no options that are aesthetically pleasing or convenient.

M. Schacter stated the parcel is small and if the shed was located in compliance with the setbacks it would be in the middle on a sloped area.

M. Schacter stated her opinion that locating the shed in compliance with the setbacks would not enhance the property value.

W. Broom referenced a circled numeral three on the plan with an arrow next to it and stated that it appeared to be a level area.

M. Schacter explained that the plan she submitted was a copy of what was used to locate the well and the topography has changed since the well was installed.

M. Schacter stated the area in question is not flat, but that is was a small ledge area that juts out.

G. Karp stated his opinion that criterion #5 is not met as there is no hardship.

M. Schacter asked how "hardship" was defined.

G. Karp stated part of determining if a hardship exists is giving some consideration to other options.

G. Karp asked how the items have been stored.

M. Schacter stated they are new owners and this is their second summer owning the property so the issue of storing the seasonal furniture and kayaks is relatively new to them.

M. Schacter stated that it is a hardship, as they age, to lug the items up the hill.

M. Schacter stated that it is a hardship to incur additional cost to dig up an area on the slope to level the position of the shed, and that it is a hardship to locate the shed in a place that blocks the view to the water.

M. Schacter summarized that cost, labor, and their physical condition are all part of the hardship.

G. Karp stated that cost is not considered as part of a hardship and in his opinion it is a matter of convenience.

J. Ruhm asked regarding the boundary between the location of the shed and the abutters on that side.

M. Schacter confirmed that there is a buffer of trees.

W. Broom stated it is invalid to argue that not allowing the shed to be placed as proposed will have a negative impact on the property values.

W. Broom asked if the Board was satisfied with the examination of the facts and prepared to review the five criteria.

W. Broom closed the Public Hearing for Case# 420-09-17 at 6:40pm.

The Board reviewed the five criteria and made the comments as follows:

1. The variance will not be contrary to the public interest because

Applicant: the shed will be located sufficiently distant from the shoreline not to effect the public interest.

G. Karp stated the proposal seems to be contrary to the public interest.

G. Karp noted the "public interest" is the regulations in the Zoning Ordinance and the proposal does not provide sufficient consideration of the regulations.

Other Board members agreed.

2. The spirit of the ordinance is observed because

Applicant: the neighbor adjacent to the side of the property where the shed is proposed to be located is in favor of the proposal.

G. Karp and W. Broom stated their opinion that the proposal is contrary to the spirit of the ordinance as the setbacks are in place to control overcrowding and over development of the waterfront as well as the overall parcel.

Other Board members agreed.

3. Substantial justice is done because

Applicant: the proposal does not have a negative impact on the neighborhood and the proposal places the shed on the one section of level area on the parcel.

W. Broom stated that an injustice is basically any loss to the individual that is not outweighed by a gain to the general public.

W. Broom stated his opinion that there is no gain to the general public and a case can't be made that the proposal meets this criterion.

Other Board members agreed.

4. The values of surrounding properties will not be diminished because

Applicant: the existence of a shed to store canoes etc. is part of the expected waterfront landscape.

G. Karp stated his opinion that because of the existence of the tree line buffer between the shed and neighboring parcel that the marketability of the property would not be effected.

W. Broom stated that the placement of the shed to be in compliance with the setbacks could be detrimental to the value of the subject property but have no effect on neighboring parcels.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because

Applicant: it would add to the complexity and expense to the project since our lot is undersized.

G. Karp noted that "complexity and expense" do not create an unnecessary hardship.

W. Broom agreed that the subject parcel is not unique as most of the lots in the area are undersized and have similar slopes.

G. Karp stated his opinion that the request for variances should be denied as all five criteria are not met.

G. Karp clarified that only criterion #4 was found to be met.

MOTION: "To DENY the Variances requested in Case #420-09-17: Application submitted by property owners, Miriam Schacter & Benjamin Gampel, for Variances to allow the placement of a shed on property located at 58 White Oak Pond Road identified as Tax Map 246-004-000, in the General Residential District as the Board found that criteria 1, 2, 3 and 5 were not met

Motion: G. Karp

Second: K. Fuller

Discussion:

Motion Passed: 4 – Yes 0 – No

W. Broom informed the applicant of their right to appeal by reading the following statement into the record: *"Any person affected has a right to appeal this decision. If you wish to appeal, you must act within thirty days of the date of this notice, tomorrow being day one. The necessary first step, before any appeal may be taken to the courts, is to apply to the Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds on which you will base your appeal. See New Hampshire Revised Statutes Annotated, Chapter 677 for details."*

W. Broom stated the following case would be considered:

Case #421-09-17: Application submitted by M. Whitcomb as agent for property owners Peter & Alison King, for a Variance from Article 700.2 to permit minor alterations to an existing deck/stairs and vertical expansion of a basement from 4-5 ft. ceiling height to 8 ft. ceiling height on property located at 19 Sunset Lane identified as Tax Map #240-028-000 in the Rural Residential District, Town of Holderness.

The variances requested include the following:

1. A variance from Section 400.8.1.1 in the amount of 23 ft. to permit construction 12 ft. from the westerly side boundary line.

2. A variance from Section 400.8.1.1 in the amount of 25 ft. to permit construction 10 ft. from the easterly side boundary line.
3. A variance from Section 400.8.1.2 in the amount of 30 ft. to permit construction 20 ft. from the reference line of Little Squam Lake.

W. Broom confirmed that the Board members received the application information for Case #421-09-17. The Board determined that the fees have been paid, public notice was posted, abutters were notified and sufficient documents to open the hearing were submitted.

The Board determined the application does not have regional impact.

No Board member indicated they had a conflict of interest with Case # 421-09-17.

W. Broom stated that only four members were able to attend the Public Hearing and asked the applicant if they wanted to proceed or continue the Public Hearing to next month.

The applicant determined to proceed with the Public Hearing.

W. Broom opened the Public Hearing for Case# 421-09-17 at 7:10pm.

M. Whitcomb, agent for property owners Peter & Alison King, presented the application.

M. Whitcomb stated the proposal is to repair/replace the foundation of an existing non-conforming structure, reconfigure a deck area, new windows and new roof.

M. Whitcomb stated the proposal includes an addition of an entrance with stairs that is in the conforming portion of the structure.

M. Whitcomb stated the existing basement has a ceiling height of 5' 6" and the proposed basement has a ceiling height of 8'.

M. Whitcomb stated that the variances requested are to allow the construction of a new basement in the existing footprint of the home.

W. Broom confirmed with M. Whitcomb that the footprint is defined by the dripline and that the proposal does not include any new area outside of the existing dripline.

M. Whitcomb agreed.

M. Whitcomb presented color photos on a computer which showed substantial cracks in the existing combination poured foundation/concrete block foundation and that the home rests below grade.

M. Whitcomb stated that as the slope has come down it has filled in around the structure so that part of the first floor is below grade.

J. Sharpe stated the home is not resting on adequate soil in a lot of areas and is resting on inadequately supported sauna tubes.

J. Sharpe stated that none of the foundation is below frost and the home is structurally compromised in several areas.

M. Whitcomb stated the proposal is to lift the house up one foot above grade from where it rests now and to excavate under the existing home to pour a new foundation which will take the existing ceiling height of the basement from 5'6" to 8'.

J. Sharpe added that the excavation will get them to better soils to provide a prep base for the new foundation, improve the drainage, properly insulate and provide moisture control.

K. Fuller asked if changing the basement ceiling height from 5'6" to 8' creates additional living area square footage.

M. Whitcomb stated the space would be used for storage as it currently is but the access would be easier.

J. Sharpe stated the frost protection is one of the largest concerns to address to assure a sound foundation is under the home.

G. Karp stated that answered his concern as to why a full basement was being proposed.

J. Sharpe stated the visual change above ground will be minimal as the house is a single story ranch and the existing ridge line will be raised only one foot.

J. Sharpe added that the structure is not located so that it effects the view of the water from another home.

G. Karp asked about the proposed changes to the stairs.

M. Whitcomb stated that a full 8' wide set of stairs comes from the upper lawn to the lower lawn.

M. Whitcomb stated that the proposal is to replace the existing stairs with two; one that goes to the upper lawn and one that goes to the basement.

M. Whitcomb stated the footprint of the stair area and the amount of impervious surface remain the same in making the changes to the stairs.

W. Broom asked about the 120 sq. ft. increase in the overall square footage of the home.

M. Whitcomb stated that a breezeway is being added to the portion of the structure that is compliant with the setbacks.

W. Broom stated he had concerns regarding adding height to the 2000 sq. ft. basement for the purpose of installing a HVAC system.

J. Sharp stated the drainage on the parcel has had a detrimental effect on the structure and adding the depth to the entire footprint of the basement allows them to get below the frost line which will allow them to address drainage and moisture issues.

J. Sharpe summarized that the work is necessary to save the structure.

G. Karp stated Section 700.2.1.1: states that "no alteration shall increase the nonconformity" and Section 700.2.1.2: states "no expansion of any kind shall occur in any setback".

G. Karp stated the definition of Expansion includes "any increase in height, width, length, living area square footage, above or below ground. This includes, but is not limited to, porches, decks, roof overhangs, patios, and basements/cellars".

K. Fuller stated she has a similar concern regarding expansion of the structure within the setbacks and that in her opinion making the basement deeper and the roofline higher is expansion as it is defined.

J. Ruhm stated her opinion that in order to save the house there is a need to go deeper but maybe not the full eight feet.

J. Sharpe stated it is likely there is at least 2 ft. of poor soil before you get down to soils that can handle the base stone and foundation footings.

J. Sharpe stated there is a need to dig deeper to stop the penetration of run-off water and get a good base under the house.

P. King stated that just jacking up the house and replacing the foundation walls will not address the problems.

M. Whitcomb stated because of the overall slope of the parcel the 8 ft. is necessary to get the house above grade level on the driveway side.

W. Broom stated he understood having to excavate to get a good base but does not understand why the finished basement height has to have a ceiling height of a full 8 ft.

J. Sharpe stated since it is likely they will have to excavate a couple of feet down to get to a good base it doesn't make sense to import base material up to the level of the original material and recreate a basement with a 5'6" high ceiling.

W. Broom stated it would avoid the conflict with the town regulations.

M. Whitcomb stated they are proposing the most extreme repair/replacement of the foundation and are willing to modify the request so that at a minimum the first floor is above grade level and the drainage issues are addressed.

J. Sharpe stated that the 8 ft. basement will allow for adequate structural support of the fireplace.

W. Broom restated his opinion that it would be possible to excavate down to where there is a good base, and then bring good base material in to the level of the existing basement floor.

K. Fuller asked if during the foundation repair the run-off water will be redirected away for the house so the same thing doesn't happen again.

J. Sharpe stated that some improvements to the ground water run-off will be made while the foundation is exposed.

W. Broom asked if Board members had additional questions.

W. Broom asked for Public Comments in Favor of the Application: None heard.

W. Broom asked for Public Comments in Opposition to the Application: None heard.

W. Broom noted that it was not necessary to ask for comments in rebuttal.

W. Broom asked if there were further questions from Board Members.

G. Karp stated his original concern with keeping the original crawl space instead of creating a full basement.

W. Broom added his concern with adding 1 ft. to the height of the structure.

W. Broom asked for specific measurements on the amount of increase in height and depth.

M. Whitcomb stated the proposal is to go 18 inches down and 12 inches up.

G. Karp questioned if the Public Notice given included a variance for the height.

It was noted the Public Notice included the following wording: "for a Variance from Article 700.2 to permit minor alterations to an existing deck/stairs and vertical expansion of a basement from 4-5 ft. ceiling height to 8 ft. ceiling height".

G. Karp stated he thought it would be profitable to do a site visit.

MOTION: "To conduct a site visit to Map 240-028-000, 19 Sunset Lane on Thursday, September 14, 2017 at 6:30PM."

Motion: G. Karp

Second: K. Fuller

Discussion: W. Broom reminded the Board members and the applicant that there will be no discussion during the site visit.

Motion Passes: 4 – Yes, 0 – No

After a discussion regarding dates/times the following motion was made:

MOTION: “To continue the Public Hearing for Case #421-09-17: Application submitted by M. Whitcomb as agent for property owners Peter & Alison King, for a Variance from Article 700.2 to permit minor alterations to an existing deck/stairs and vertical expansion of a basement from 4-5 ft. ceiling height to 8 ft. ceiling height on property located at 19 Sunset Lane identified as Tax Map #240-028-000 in the Rural Residential District to Tuesday, September 26, 2017 beginning at 6:15PM.”

Motion: G. Karp

Second: J. Ruhm

Discussion: None

Motion Passes: 4 – Yes, 0 - No

W. Broom stated the following case would be considered:

Case #422-09-17: Application submitted by property owners Bob and Sara Rothschild, for Variances necessary to permit the subdivision of an existing parcel into two separate home sites on property located at 467 US Rt. 3 identified as Tax Map 241-074-000 in the General Residential District, Town of Holderness. The variances requested include the following:

1. A variance for Lot 1 from Section 400.8.2 in the amount of 50 ft. to permit location of the leach field 75 ft. from the well.
2. A variance for Lot 1 from Section 400.8.2 in the amount of 32 ft. to permit location of the leach field 93 ft. from the reference line of White Oak Pond.
3. A variance for Lot 2 from Section 400.8.1.1 in the amount of 8.88 ft. to permit the location of a structure to be 26.12 ft. from the boundary line.

W. Broom confirmed that the Board members received information submitted by the applicant.

The Board determined that the fees have been paid, public notice was posted, abutters were notified and sufficient documents to open the hearing were submitted.

The following documents were distributed to the board members:

1. Memorandum of Law from the office of J. McCormack
2. Proposed Septic Plan
3. Health Officer comments/denial of Septic design

The Board determined the application does not have regional impact.

J. Ruhm stated she needed to recuse herself from the case as she had a conflict of interest.

W. Broom stated that only three members were now available for the Public Hearing and asked the applicant if they wanted to proceed or continue the Public Hearing to next month.

W. Broom noted that an approval would require three votes in favor.

The applicant determined to proceed with the Public Hearing.

W. Broom asked if one of the abutters on the plan needed to be updated.

It was reported that notice for Tax Map 241-067-000 was sent to new owners Andrew & Jenna Herring.

W. Broom opened the Public Hearing for Case# 422-09-17 at 7:40pm.

J. McCormack presented the application.

J. McCormack stated Surveyor J. March, Septic Designer B. Barnard and the property owners were present.

J. McCormack reviewed the three variances requested as stated in the Public Notice.

J. McCormack stated in 2005 the Planning Board granted permission for a second dwelling to be constructed on the 2.98 acre parcel and to have the two homes use a shared septic system.

J. McCormack stated that a new septic system is proposed for the existing home on Lot 1 and the existing home on Lot 2 would continue to use the existing 5 bedroom system.

J. McCormack stated it makes good sense to provide a separate septic system for each of the proposed lots.

J. McCormack stated that the proposed septic system meets NH DES setback requirements but needs variances from the Town of Holderness setback requirements.

J. McCormack stated the odd shape and amount of shore frontage of Lot 1 create a significant hardship to locate a septic system on it without needing a variance.

J. McCormack stated the proposed boundary line between the two lots was drawn to keep the land in front of each existing residence on that parcel.

J. McCormack stated the subdivision as proposed does not degrade property values and is not inconsistent with the high end houses in the neighborhood.

J. McCormack referred to the Memorandum of Law in which each of the five criteria are addressed.

J. McCormack summarized that the proposal is a good balance between a good Ordinance and reasonable use of the land.

G. Karp asked if the well would be encased to protect the water supply.

B. Barnard stated that the well is uphill slightly from the septic system and the effluent from the septic system will flow in the opposite direction from the well.

B. Barnard stated the septic system is located as proposed to minimize the effect on the lake and the well.

M. Barnard noted the well meets the NH DES setback requirements.

G. Karp stated if the boundary line was angled away from the beach more toward Lot 1 the variance for the studio being within the setback would not be needed.

J. March stated that several lot lines were proposed and the one being proposed is the most favorable for both the potential buyer and the seller.

J. March added that keeping the boundary line as straight as possible keeps it simple and allows both properties to retain the land between the home and the waterfront on the respective parcels.

J. McCormack stated keeping the sight line to the water on the respective parcels is a good use of the land.

W. Broom asked if Board members had additional questions.

W. Broom asked for Public Comments in Favor of the Application:

J. Cocchiaro asked for a more detailed explanation of the leech field on Lot 1 and how White Oak Pond will be protected from the run off from that system.

B. Barnard stated he has been designing septic systems since 1968 and that the septic system being proposed takes advantage of the longer distance with less slope.

M. Barnard added the proposed system exceeds the NH DES setback of 75 ft. by 18 ft. as the system is located 93 ft. from the water.

W. Broom asked if the septic system could be moved 20 ft. further back from the water.

M. Barnard stated that it would conflict with the well radius.

R. Cocchiaro asked what kind of soil the system is in and stated his opinion that clay soils would keep more particles of the effluent from reaching the lake.

B. Barnard stated there are differing opinions as to when clay or sand is better to use and that in this circumstance the sand is better.

W. Broom asked for Public Comments in Opposition to the Application: None heard.

W. Broom asked if the applicant had comments in rebuttal.

J. McCormack referred to the statements made in the Memorandum of Law.

W. Broom asked if there were further questions from Board Members.

W. Broom closed the Public Hearing at 8:05PM.

The Board began a review of the five criteria and made the following comments:

The Board reviewed the five criteria and made the comments as follows:

1. The variance will not be contrary to the public interest because

Applicant: the principal structures have existed for some time and the entire property is well shielded from view. The septic system will comply with State regulations. The public interest is not adversely affected by anything being proposed.

G. Karp agreed the public interest is not adversely affected.

The Board members agreed the criteria is met.

2. The spirit of the ordinance is observed because

Applicant: the proposed septic system to be placed on Lot 1 complies with all applicable State regulations. The proposed septic system allows for each of the two lots to be supported by its own septic system which aids in ensuring the public health, safety and welfare while allowing the property owners reasonable use of their property.

G. Karp stated his agreement that having two septic systems is better than having both residences on a single septic system.

G. Karp stated a major concern behind the purpose of the Zoning Ordinance is the protection of the lake.

G. Karp stated that although the proposed septic does not meet the more stringent Holderness regulations the proposal does meet/exceed what the State requires.

K. Fuller stated consideration is given to all of the contributing factors of the parcel of land while trying to find the proposal which seeks the least amount of relief from the Zoning Ordinance.

Other Board members agreed the criteria is met.

3. Substantial justice is done because

Applicant: when approval to construct the second dwelling on the parcel was obtained in 2005 it was believed that a future subdivision would comply with existing zoning regulations and no variances would be necessary. No justice occurs if the variances are not granted.

W. Broom stated that the construction approval for the second dwelling on the parcel was obtained during a 4 year window when the Zoning Ordinance allowed it.

W. Broom added that two residences on a single parcel are not currently permitted in the Zoning Ordinance and the proposal provides opportunity for it to be less non-conforming in that sense.

K. fuller and G. Karp agreed that substantial justice would be done by granting the variances.

4. The values of surrounding properties will not be diminished because

Applicant: Granting the variances will have no impact on the value of the existing property. All the improvements and structures are well hidden from the public and are of first rate quality and design and will increase the Holderness tax base.

G. Karp stated his agreement that granting the variances will have no impact on property values.

Other Board members agreed the criteria is met.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because

Applicant: The existing parcel is almost triangular in shape located between US Rt. 3 and White Oak Pond.

The configuration of the lot makes it impossible to locate a septic system on it that is in full compliance with setback regulations. The common lot line could not be altered so that it would result in full compliance of the studio structure with the Zoning Ordinance.

W. Broom stated the structures were permitted by the Planning Board in 2005 and that the property owners are left with the hardship of dealing them.

Other Board members agreed the criteria is met.

MOTION: "To GRANT the Variances requested for Case #422-09-17: Application submitted by property owners Bob and Sara Rothschild, for Variances necessary to permit the subdivision of an existing parcel into two separate home sites on property located at 467 US Rt. 3 identified as Tax Map 241-074-000 in the General Residential District, Town of Holderness.

The variances requested include the following:

1. A variance for Lot 1 from Section 400.8.2 in the amount of 50 ft. to permit location of the leach field 75 ft. from the well.
2. A variance for Lot 1 from Section 400.8.2 in the amount of 32 ft. to permit location of the leach field 93 ft. from the reference line of White Oak Pond.
3. A variance for Lot 2 from Section 400.8.1.1 in the amount of 8.88 ft. to permit the location of a structure to be 26.12 ft. from the boundary line."

Motion: G. Karp

Second: K. Fuller

Discussion: None

Motion Passed: 3 – Yes 0 – No

W. Broom stated the following: "Any person affected has a right to appeal this decision. If you wish to appeal, you must act within thirty days of the date of this notice, tomorrow being day one. The necessary first step, before any appeal may be taken to the courts, is to apply to the Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds on which you will base your appeal. See New Hampshire Revised Statutes Annotated, Chapter 677 for details."

W. Broom stated the following case would be considered:

Case #423-09-17: Application submitted by Bruce Barnard as agent for property owners Frank and Elizabeth Stevens for Variances necessary to permit the installation of a septic system on property located at 70 Kesumpe Point Road identified as Tax Map 236-068-000 in the General Residential District, Town of Holderness. The variances requested include the following:

1. A variance from Section 400.8.1 in the amount of 18.9 ft. to permit location of the leach field 16.1 ft. from the edge of the right-of-way.
2. A variance from Section 400.8.1.1 in the amount of 9.9 ft. to permit location of the leach field 25.1 ft. from the property line.
3. A variance from Section 400.8.2 in the amount of 15.4 ft. to permit the location of the septic tank 59.6 ft. from the well.
4. A variance from Section 400.8.2 in the amount of 50 ft. to permit the location of the leach field 75 ft. from the well.
5. A variance from Section 400.8.2 in the amount of 12.1 ft. to permit the location of the leach field 112.9 ft. from the reference line of Squam Lake.

W. Broom verified that the Board members received the information submitted by the applicant.

The Board determined that the fees have been paid, public notice was posted, abutters were notified and sufficient documents to open the hearing were submitted.

The Board determined the application does not have regional impact.

W. Broom stated that only four members were able to attend the Public Hearing and asked the applicant if they wanted to proceed or continue the Public Hearing to next month.

The applicant determined to proceed with the Public Hearing.

W. Broom opened the Public Hearing for Case# 423-09-17 at 8:15 PM.

The Applicant, F. Stevens, presented the application.

F. Stevens stated they recently purchased the property and found the existing septic system to be comprised of a rusty tank that overflows into a pit and that tree roots have had to be removed from the tank in the past.

F. Stevens added that they did not trust the existing system enough to start taking showers at the residence.

M. Barnard, septic designer, stated the property is less than ½ acre in size and is oddly shaped.

M. Barnard stated the proposed septic design shifts the location of the septic tank and leach field as far away from the lake and the well as possible but is still in violation of the Holderness setback requirements.

M. Barnard stated the proposal meets the NH DES setback requirements.

M. Barnard reviewed the variances requested as listed in the public notice.

M. Barnard stated the proposed septic system is closer to the road and further from the water than the existing one.

M. Barnard stated it is his professional opinion that the septic system is located in the best possible location.

W. Broom asked if Board members had any questions.

W. Broom asked for Public Comments in Favor of the Application: None heard.

W. Broom asked for Public Comments in Opposition to the Application: None heard.

W. Broom noted that it was not necessary to ask for comments in rebuttal.

W. Broom asked if there were further questions from Board Members.

W. Broom closed the Public Hearing at 8:35PM.

The Board reviewed the applicant's response as to how the five criteria are met:

1. The variance will not be contrary to the public interest because

Applicant: A new septic system will better protect the surrounding area. The neighborhood is already developed and the subdivision predates existing zoning regulations. The parcel is less than ½ acre in size.

2. The spirit of the ordinance is observed because

Applicant: by allowing the use of the latest septic technology the surrounding area will be better protected environmentally than it is now.

3. Substantial justice is done because

Applicant: the applicant is allowed to have a functioning septic system.

4. The values of surrounding properties will not be diminished because

Applicant: allowing a new septic to be installed the surrounding environment will be protected thereby preserving the surrounding property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because

Applicant: If the variances requested are not granted then the new septic could not be installed and the old failing septic would still have to be used which would limit bathroom use and increase the potential for damage to the environment.

W. Broom asked if any Board member had any issues with the proposal meeting any one of the five criteria.

G. Karp stated he considered this to be an emergency situation to discontinue the outdated/failing existing septic and replace it with the one being proposed as it seeks the least relief from the setbacks as possible.

K. Fuller stated that the proposal is the best possible solution.

MOTION: "To GRANT the Variances requested for Case #423-09-17: Application submitted by Bruce Barnard as agent for property owners Frank and Elizabeth Stevens for Variances necessary to permit the installation of a septic system on property located at 70 Kesumpe Point Road identified as Tax Map 236-068-000 in the General Residential District. The variances requested include the following:

1. A variance from Section 400.8.1 in the amount of 18.9 ft. to permit location of the leach field 16.1 ft. from the edge of the right-of-way.
2. A variance from Section 400.8.1.1 in the amount of 9.9 ft. to permit location of the leach field 25.1 ft. from the property line.
3. A variance from Section 400.8.2 in the amount of 15.4 ft. to permit the location of the septic tank 59.6 ft. from the well.
4. A variance from Section 400.8.2 in the amount of 50 ft. to permit the location of the leach field 75 ft. from the well.
5. A variance from Section 400.8.2 in the amount of 12.1 ft. to permit the location of the leach field 112.9 ft. from the reference line of Squam Lake.

Motion: J. Ruhm

Second: K. Fuller

Discussion: None

Motion Passed: 4 – Yes 0 – No

W. Broom stated the following: "Any person affected has a right to appeal this decision. If you wish to appeal, you must act within thirty days of the date of this notice, tomorrow being day one. The necessary first step, before any appeal may be taken to the courts, is to apply to the Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds on which you will base your appeal. See New Hampshire Revised Statutes Annotated, Chapter 677 for details."

OTHER BUSINESS:

ADJOURNMENT:

At 8:45PM the following motion was made:

MOTION: "To adjourn."

Motion: J. Ruhm

Second: K. Fuller

Discussion: None

Motion Passed: 4 – Yes 0 – No

Respectfully submitted,



Nancy Decoteau

Administrative Assistant